

EXHIBIT 5

Filed Under Seal

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SONOS, INC.,
4 Plaintiff,
5 vs. Case No. 3:21-CV-07559-WHA
6 GOOGLE LLC
7 Defendant.

8 -AND-

9 GOOGLE LLC,
10 Plaintiff,
11 vs. Case No. 3:20-CV-06754-WHA
12 SONOS, INC.,
13 Defendant.

14 **CONFIDENTIAL - ATTORNEYS' EYES ONLY**

15 ZOOM DEPOSITION OF JAMES E. MALACKOWSKI
16 (Reported Remotely via Video & Web Videoconference)
17 Miami, Florida (Deponent's location)
18 Monday, January 30, 2022

19 Volume 1

20 STENOGRAPHICALLY REPORTED BY:
21 REBECCA L. ROMANO, RPR, CSR, CCR
California CSR No. 12546
22 Nevada CCR No. 827
Oregon CSR No. 20-0466
23 Washington CCR No. 3491
24 JOB NO. 5686085
25 PAGES 1 - 297

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1 the benchmark that I used, so I didn't think there 04:18:50
2 would be any need for a change there.

3 And we moved forward to talk about the
4 '966 royalty base issues that you and I have
5 already spoken about. 04:19:05

6 Q. So since your deposition in connection
7 with the share down trial, have you become aware of
8 any users of the IFTTT app other than members of
9 your Ocean Tomo team, outside counsel for Sonos, or
10 Sonos' retained technical experts who have used 04:19:23
11 that app for grouping of speakers?

12 A. No, but I, A, didn't seek such because
13 it's not relevant, and, B, I don't know how that
14 information would ever be available. We know that
15 there is a very large number of users for IFTTT, 04:19:40
16 but I don't have that data to show how they've
17 configured their use.

18 Q. You haven't seen any examples on the
19 IFTTT website of users using an IFTTT applet for
20 grouping of speakers or for Zone Scene? 04:20:00

21 A. I haven't, but I wouldn't expect to.
22 Given the pervasiveness of Google's infringement
23 and the ability to group through Sonos, I don't
24 suspect that IFTTT is necessary, because most users
25 fall into one of those two camps, the authorized 04:20:17